IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 103 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHANJI RAMJI

Versus

STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 103 of 2001(Through Jail)
MS SADHANA SAGAR for appellant
Mr.M.A.Bukhari, learned Addl.P.P.
for the respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.K.TRIVEDI

Date of decision: 29/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. This Jail Appeal is directed against the judgment and order dated 29.4.'95 of the learned Special Judge in Special Case No.76/94 convicting the appellant for the offences under Sections 20(b)(ii) and 22 of the Narcotic Drugs And Psychotropic Substances Act, 1985 and sentencing him to suffer rigorous imprisonment for a period of ten years and pay a fine of Rs.1,00,000/-- in default to undergo further rigorous imprisonment for three years.

2. As per the Charge Ex.3 framed against him, the appellant was found in possession of 2 kgs. and 500 grams of Ganja on 12.9.94 at Platform No.4 of Surendranagar Railway Station without any pass or permit and he thereby committed offence under Sections 20(b)(ii) and 22 of the said Act. When the plea of the accused was recorded at Exh.4, the charge was read out to him and he stated that he was admitting the crime and that he was found to be in possession of 2 Kgs. and 500 grams of Ganja. According to him the allegation to this effect in the charge was correct. As recorded by the trial Court in the Judgment, when the accused categorically admitted the charge regarding his being found to be in possession of 2 Kgs. and 500 grams of Ganja, in order to ascertain whether he was voluntarily admitting the crime after understanding its repercussions, the Court asked various questions to him and forewarned him about the consequences of admission of guilt and though the lawyers, who were present in the Court, inside the court as well as after taking him outside the court, made him understand the seriousness of admission of such guilt, the accused insisted on admitting the guilt. It is recorded in the judgment that the learned Judge tried to ascertain whether the accused was in proper mental state to understand the seriousness of the offence and admission of the guilt and the Court was satisfied that he was willingly and after understanding admitting the guilt.The accused was even offered services by some lawyers, who were present, but he told the Court that Ganja was only a vegetable and according to him there was nothing wrong in consuming it or keeping it in possession. The accused told the Court that he did not want services of any lawyer and the Court may take its own decision, if it was an offence in accordance with law. Thereafter, the Court again made him sit outside the Court and some lawyers again apprised him of the seriousness of the offence and about the provisions of punishment. Even,thereafter, the accused told the Court that he was voluntarily admitting the guilt.

3. Muddamal Receipt Exh.2 recorded the fact that 2 Kgs and 500 grams of Ganja was recovered from the accused. The report of the Chemical Analyser established that the substance recovered from the accused was Ganja. The learned Special Judge accepting his plea of guilt found the accused guilty of the offences under Sections 20(b)(ii) and 22 of the said Act.

4. The accused had admitted in his plea the guilt for the offence of having possessed Ganja. He had not admitted the guilt in respect of Section 22 of the said Act which deals with punishment for contravention in relation to psychotropic substances. In fact,there was no charge against the accused that he was having in his possession any of the psychotropic substances,which are specified in the Schedule referred in the definition of 'psychotropic substance' contained in Section 2(xxiii) of the Act. The distinction between "narcotic drug" defined in Section 2(xiv) of the Act and "psychotropic substance" as defined in Section 2(xxiii) has been completely overlooked by the trial Court. Therefore, the conviction of the accused for the offence under Section 22 of the said Act is not warranted and cannot be sustained.

5. The accused has been convicted and sentenced for the offence under Section 20(b)(ii) of the said Act on the basis that he was in illegal possession of Ganja. The provisions of Section 20 of the said Act read as under:-

"20. Punishment for contravention in relation to cannabis plant and cannabis,- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder,-

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable-

(i) where such contravention relates to ganja or the cultivation of cannabis plant, with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to fifty thousand rupees;

(ii) where such contravention relates to cannabis other than ganja, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees and which may extend to two lakh rupees;

Provided that the Court may, for reasons to be recorded in the judgment impose a fine exceeding two lakh rupees."

5.1 It would become at once clear on reading of the provisions of Section 20, that sub-clause (ii) of clause (b) thereof applies in cases where the contravention relates to cannabis other than Ganja. In the present case the accused is found guilty of possessing Ganja and, therefore, the offence committed by him clearly falls under Section 20(b)(i), which prescribes punishment for contravention relating to Ganja. The learned Special Judge has, therefore, erred in convicting the accused for the offence under Section 20(b)(ii) of the said Act instead of convicting him under Section 20(b)(i) of the said Act, which applies to contravention relating to Ganja and prescribes punishment of rigorous imprisonment for a term which may extend to five years and fine, which may extend to fifty thousand rupees. Therefore, the sentence of ten years' rigorous imprisonment and fine of Rs.1,00,000/-- which is prescribed under Section 20(b)(ii) in respect of contravention relating to cannabis other than Ganga could not have been imposed for the offence of possessing Ganja, which would specifically fall in Section 20(b)(i) of the said Act and not under Section 20(b)(ii) of the Act. We, therefore, pass the following order:-

The Appeal is partly allowed and while setting aside the conviction of the accused under Sections 20(b)(ii) and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the sentence imposed on him, he is hereby convicted under Section 20(b)(i) of the said Act and imposed a sentence of rigorous imprisonment for a term of five years and a fine of Rs.50,000/-- in default of payment of which to undergo further R.I. for a term of one year.

(R.K.Abichandani,J)

(D.K.Trivedi,J)

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